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Message Text

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ACTION EUR-12

INFO OCT-01 ISO-00 FEA-01 ACDA-07 AGRE-00 AID-05 CEA-01
CEQ-01 CG-00 CIAE-00 COME-00 DLOS-06 DODE-00 DOTE-00
EB-08 EPA-01 ERDA-05 FMC-01 TRSE-00 H-01 INR-07
INT-05 IO-13 JUSE-00 L-03 NSAE-00 NSC-05 NSF-01
OES-06 OMB-01 PA-01 PM-04 PRS-01 SP-02 SS-15 USIA-06
SAL-01 EURE-00 /121 W
----------092057Z 091425 /73
P R 092010Z MAR 77
FM AMEMBASSY BONN
TO SECSTATE WASHDC PRIORITY 6325
INFO USMISSION EC BRUSSELS PRIORITY
USMISSION USBERLIN
AMEMBASSY BERLIN
AMEMBASSY LONDON
AMEMBASSY MOSCOW
AMEMBASSY PARIS
USMISSION NATO BRUSSELS

C O N F I D E N T I A L SECTION 01 OF 02 BONN 04251

E.O. 11652: GDS
TAGS: PFOR PGOV EEC UR WB GW US UK FR
SUBJECT: EC/SOVIET FISHERIES NEGOTIATIONS: BERLIN
AND THE TERRITORIAL CLAUSE

REFS: (A) EC BRUSSELS 1901; (B) BONN 3615;
(C) BONN 3537

BEGIN SUMMARY. THE SOVIET NEGOTIATING DELEGATION HAS BEEN INFORMED QUIETLY THAT THE AREA OF APPLICATION CLAUSE IN THE DRAFT EC AGREEMENT REFERS TO BERLIN. THE SOVIETS HAVE REJECTED THE CLAUSE, BUT HAVE NOT YET MENTIONED BERLIN AS A REASON FOR REJECTION. THE FRG WILL CONTINUE TO INSIST ON INCLUSION OF THE CLAUSE IN THE EC/SOVIET TREATY. END SUMMARY.
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1. THE BERLIN ISSUE HAS BEEN POSED IN THE BRUSSELS NEGOTIATIONS, BUT THE SOVIETS HAVE NOT YET REACTED. DEVELOPMENTS IN BRUSSELS AS THEY AFFECT BERLIN WERE DISCUSSED IN A TRIPARTITE MEETING ON MARCH 8 AND IN THE FULL BONN GROUP ON MARCH 9. WE HAVE ALSO HAD SUPPLEMENTARY BILATERAL REPORTS FROM SOME OF OUR BONN GROUP

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COLLEAGUES, WHO HAVE SOUGHT TO KEEP US INFORMED IN CASE URGENT DECISIONS ON HANDLING THE BERLIN ISSUE ARE REQUIRED. FOLLOWING IS A RESUME OF DEVELOPMENTS THUS FAR, AS REPORTED HERE.

2. THE FULL TEXT OF THE EC DRAFT TREATY WAS GIVEN TO THE SOVIETS INFORMALLY ON MARCH 4 AND WAS DISCUSSED WITH THE SOVIETS ON MARCH 7. ALSO ON MARCH 7 THE SOVIETS HANDED OVER AN ENTIRE COUNTERDRAFT, INCLUDING A SUBSTITUTE FOR THE EC ARTICLE OF APPLICATION CLAUSE.

3. ASKED BY THE SOVIET NEGOTIATOR, MOYSEEV, TO EXPLAIN THE MEANING OF THE EC TERRITORIAL CLAUSE (THE TEXT OF WHICH IS REPORTED IN REF (C), GALLAGHER STATED THAT SUCH A CLAUSE WAS NECESSARY TO COVER ALL OF THE TERRITORIES INVOLVED. HE MENTIONED SPECIFICALLY GREENLAND AND THE OVERSEAS FRENCH TERRITORIES. MOYSEEV RESPONDED THAT THE CLAUSE WAS SUPERFLUOUS AND UNACCEPTABLE. GALLAGHER SAID THAT THE EC CONSIDERED THE CLAUSE ESSENTIAL; IT WAS A NORMAL PART OF EC TREATIES AND COULD NOT BE RENOUNCED BY THE EC.

4. SCOTT (UK), REPRESENTING THE PRESIDENCY, CONSIDERED GALLAGHER'S EXPLANATION TOO DISINGENUOUS. AT THE END OF THE NEGOTIATING SESSION, THEREFORE, HE TOLD MOYSEEV PRIVATELY THAT THE CLAUSE ALSO REFLECTED THE POSITION OF THE EC ON BERLIN (APPARENTLY FOLLOWING THE SCENARIO REPORTED IN REF B). MOYSEEV THANKED HIM, SAID HE WOULD CONSULT HIS AUTHORITIES, BUT ADDED THAT THE SOVIETS
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WOULD PREFER NO ARTICLE AT ALL ON THIS. SCOTT STATED THAT THE CLAUSE WAS ESSENTIAL AS IT WAS NECESSARY IN ALL AGREEMENTS TO DEFINE THE AREA INCLUDED.

5. THE COUNTERDRAFT WHICH THE SOVIETS TABLED DURING THE NEGOTIATING SESSION CONTAINED THE FOLLOWING ARTICLE, WHICH THE SOVIETS SAID COMBINED TWO ARTICLES OF THE EC DRAFT -- AN ARTICLE RESERVING POSITIONS ON MATTERS BEFORE THE LAW OF THE SEA (LOS) CONFERENCE AND THE AREA OF APPLICATION CLAUSE:

"NOTHING CONTAINED IN THE PRESENT AGREEMENT SHALL PREJUDICE THE VIEWS OF BOTH PARTIES WITH RESPECT TO EXISTING TERRITORIAL OR OTHER JURISDICTION OF THEIR COASTAL STATES FOR ALL PURPOSES EXCEPT THE CONSERVATION AND MANAGEMENT OF FISH STOCKS."

6. AFTER THE MORNING NEGOTIATING SESSION OF MARCH 7,

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GALLAGHER AND SCOTT HAD LUNCH WITH THE SOVIET DELEGATION. AT THE END OF THE LUNCHEON, SCOTT SUGGESTED THAT

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C O N F I D E N T I A L SECTION 02 OF 02 BONN 04251

THE EC TERRITORIAL CLAUSE WAS NOT VITAL AND PROPOSED THAT ITS CONTENT BE INCLUDED IN THE PREAMBLE OF THE AGREEMENT. BOTH THE FRENCH AND THE FRG SEVERELY CRITICIZED THIS SUGGESTION WHEN THEY LEARNED OF IT, AND THE FRENCH CALLED A SPECIAL MEETING IN BRUSSELS THE MORNING OF MARCH 9 TO INSIST THAT THE EC NEGOTIATORS FOLLOW THE PROCEDURES WHICH HAD BEEN AGREED UPON. THE COMMISSION INITIALLY INSISTED ON THE COMPROMISE SCOTT HAD OFFERED TO THE SOVIETS BUT EVENTUALLY RELENTED. AT ANOTHER MEETING WITH THE SOVIETS LATER ON MARCH 9, GALLAGHER INFORMED THEM

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THAT THE POSITION OF THE EC WAS UNCHANGED AND REMAINED
AS REFLECTED IN THE EC DRAFT TREATY. HE EXPLAINED
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THAT SCOTT'S OFFER HAD BEEN PRIVATE AND UNOFFICIAL.
THERE WAS TO BE ANOTHER NEGOTIATING SESSION ON
THE AFTERNOON OF MARCH 9.

7. AT SOME POINT DURING THE DISCUSSIONS ON MARCH 7,
THE SOVIETS POINTED OUT THAT THE RECENTLY CONCLUDED
AGREEMENT BETWEEN THE EC AND THE US DID NOT CONTAIN
A TERRITORIAL CLAUSE. FROM THE EC SIDE THIS WAS
EXPLAINED AWAY ON GROUNDS THAT THE AGREEMENT WITH THE
US WAS IN EFFECT DICTATED BY US LEGISLATION. IT WAS
NOT A RECIPROCAL AGREEMENT, IN THAT ITS PURPOSE WAS
TO OPEN US FISHING AREAS TO THE EC, AND THERE WAS THUS
NO NEED FOR THE TRADITIONAL TERRITORIAL CLAUSE.

8. AN OFFICER OF THE SOVIET EMBASSY IN BRUSSELS TOLD
A MEMBER OF THE FRG MISSION ON MARCH 9 THAT THE
SOVIETS WERE AWARE THAT THE GERMANS WANTED TO COVER
BERLIN THROUGH THE TERRITORIAL CLAUSE. HE SAID THAT
THE SOVIETS HAD A PROBLEM, IN THAT THE COMMUNITY
WANTED TO ENHANCE ITS RIGHTS CONCERNING THE ECONOMIC
ZONE OF THE HIGH SEAS; THE TERRITORIAL CLAUSE AS
DRAFTED BY THE EC CREATED THE IMPRESSION THAT THE EC
WANTED TO ESTABLISH SOVEREIGNY .OVER THIS ZONE, GOING
BEYOND LOS PRINCIPLES.

9. THE TERRITORIAL CLAUSE IS BUT ONE OF SEVERAL
PROBLEMS STILL TO BE RESOLVED INTHE NEGOTIATIONS.
AMONG OTHER ISSUES, THE SOVIETS ON MARCH 7 QUESTIONED
THE PROCEDURE OF CONCLUDING THE AGREEMENT WITH THE EC,
RATHER THAN WITH INDIVIDUAL EC MEMBER STATES
WHICH BORDER ON THE NORTH SEA. THE SOVIET COUNTER-
DRAFT OMITTED A TITLE FOR THE AGREEMENT AND LEFT BLANK
THE NAMES OF THE PARTIES TO THE AGREEMENT.

10. COMMENT: THIS BEING OUR FIRST EXPOSURE, WE ARE
UNCERTAIN WHETHER SUCH DISARRAY IS NORMAL FOR EC
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NEGOTIATIONS. FROM COMMENTS OF INDIVIDUAL BONN GROUP
MEMBERS IT IS APPARENT THAT THE GERMANS AND THE FRENCH
ARE MOST UNHAPPY WITH THE WAY THE NEGOTIATIONS HAVE
BEEN CONDUCTED THUS FAR. THE FRENCH BELIEVE THAT

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SCOTT MENTIONED BERLIN PREMATURELY TO THE SOVIETS, AND THEY ALSO THINK TOO MUCH VODKA WAS CONSUMED AT THE LUNCHEON AT WHICH THE EC NEGOTIATORS OFFERED TO GIVE AWAY THE TERRITORIAL CLAUSE. THE GERMANS, MEANWHILE, STATE THAT THEY WILL CONTINUE TO INSIST THAT THE TERRITORIAL CLAUSE APPROXIMATELY AS IT IS PRESENTLY DRAFTED BY INCLUDED IN THE TREATY. IN THE GERMAN VIEW IT WOULD BE ALMOST IMPOSSIBLE TO CHANGE THE CLAUSE NOW THAT BERLIN HAS BEEN MENTIONED TO THE SOVIETS, AS THIS WOULD INDICATE A RETREAT FROM THE EC POSITION ON BERLIN. BOTH THE GERMAN AND THE FRENCH BONN GROUP REPS ASSUME THAT IT WOULD BE UNACCEPTABLE FOR THE AGREEMENT TO BE CONCLUDED ONLY WITH COASTAL STATES AND NOT WITH THE EC AS A WHOLE -- FOR REASONS HAVING NOTHING TO DO WITH BERLIN.

11. THERE WAS SOME SPECULATION IN THE BONN GROUP ON SOVIET MOTIVES IN TABLING THEIR REVISED VERSION OF THE TERRITORIAL CLAUSE, WHICH DID IN FACT HAVE LITTLE BEARING ON BERLIN ONE WAY OR THE OTHER. THE BERLIN ISSUE IS THUS IN LIMBO FOR THE MOMENT.
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